

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*[Protest of Bid Rejection as Nonresponsive]*

FILE: B-196297

DATE: March 14, 1980

MATTER OF: Southland Construction Company

**DIGEST:**

Bid is properly rejected as nonresponsive where accompanied by altered bid bond without evidence of surety's consent to be bound by changes.

Southland Construction Company (Southland) protests award to anyone but itself under Department of the Air Force invitation for bids (IFB) No. F01600-79-B-0060 issued August 14, 1979, for repair, painting and carpeting of buildings at Maxwell Air Force Base, Alabama.

Bids were opened on September 17, 1979, and award was made to the second low bidder on September 29, 1979. Southland was the apparent low bidder, but its bid was rejected as nonresponsive because the bid bond required by the IFB had been altered without any indication of consent to the changes by the surety. The bid bond in question had originally been executed for solicitation No. F01600-79-B-0010, which opened on January 22, 1979. The alterations had been made by applying white correction fluid to erase the original entries, and by retyping, which changed the date of bond execution and bid date from January 22, 1979, to September 17, 1979, and the IFB number from F01600-79-B-0010 to No. F01600-79-B-0060 (the original entries were visible when the form was held to a light). While Southland's owner initialed the alterations on the bond form, the surety did not (the surety did ratify the changes after bid opening). Southland nonetheless believes it acted properly because it accomplished the modifications in accordance with its interpretation of paragraph 5(a), Standard Form 22, the preprinted instructions which accompanied the solicitation. The instruction states simply that:

*008497-111790*

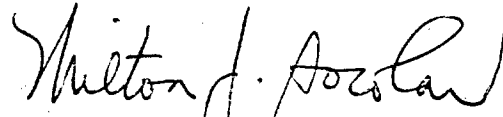
"Bids shall be submitted on the forms furnished \* \* \* and must be manually signed. If erasures or other changes appear in the forms, each erasure or change must be initialed by the person signing the bid."

We believe Southland is in error in this respect. While we do not question Southland's good faith in its interpretation of the foregoing instruction, we point out that a bid bond is not a part of the bid itself which a bidder can unilaterally modify without his surety's consent. It is a separate legal instrument by which a surety proposes to indemnify the Government in a specified amount in the event its principal (bidder) fails to enter into a contract in accordance with the terms of its bid. See 41 Comp. Gen. 585 (1962).

It is a general rule of surety law that no one incurs a liability to pay a debt or perform a duty for another unless he expressly agrees to be so bound, for the law does not create relationships of this character by mere implication. 44 Comp. Gen. 495 (1965). For this reason, a bond which has been altered without any evidence that the surety agrees to be bound by the changed terms and conditions is materially defective. See Long's Air Conditioning, Inc., B-187566, January 6, 1977, 77-1 CPD 11. Since the surety in this case was in a position to disavow its obligation under the bond, after bid opening, and because the defect cannot be explained or corrected after such opening, we believe the agency properly rejected the bid as nonresponsive. See Long's Air Conditioning, Inc., supra. To permit a bidder to establish a surety's obligation on a bid bond after bid opening would tend to compromise the integrity of the competitive bid system by making it possible for a bidder to decide after opening whether or not to make his bid acceptable. Thus, even though the Government may have saved approximately \$5,000 by award to Southland, the integrity of the competitive bid system is infinitely more in the public interest than the financial saving in any individual procurement. 44 Comp. Gen., supra.

Finally, Southland suggests that another similarly altered bid bond was accepted by the agency under another IFB. While the agency has offered an explanation for this occurrence, we believe it is not necessary to consider the propriety of this action, since it is clear that the Southland bid was properly rejected in this instance. Thus, even if the agency erred in its acceptance of an altered bid bond on another occasion, its rejection of Southland's bid in this instance was proper, since it was required to do so by law. See Moody Tools Inc., B-193446, March 16, 1979, 79-1 CPD 187.

The protest is denied.



For the Comptroller General  
of the United States